PRIVY COUNCIL REPORT

RE ROBINSON'S; ROBINSON & CO. LTD. & ANOR. v. COLLECTOR OF LAND REVENUE, SINGAPORE

[Privy Council (Lord Wilberforce, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman & Lord Lane) December 11, 12 & 13, 1978 and March 20, 1980]

[Privy Council Appeal No. 2 of 1978]

Land Acquisition — Acquisition within six months of land devastated or affected by fire — Market value — Loss of future earnings — Land Acquisition Act (Cap. 272), ss. 5(1) and 33(1).

This was an appeal and cross-appeal from the decision of the Court of Appeal reported in [1978] 1 M.L.J. 5, in which answers were given to questions raised by case stated under the Land Acquisition Act. The questions related to the compulsory acquisition of land situated at Raffles Place, Singapore. The building on the land was destroyed by fire and it was contended by the Collector that the land having been devastated by fire and acquired under the Land Acquisition Act within 6 months thereafter, the provisos in subsection (1) of section 33 of the Act applied with the result that the appellants were only entitled to one third of the vacant land market value, calculated under the provisos. The Court of Appeal agreed with this contention of the Collector. The appellants appealed against this decision.

It was further contended by the Collector, that whether he was right or wrong on the first point, there should be no award under paragraph (d) of section 33(1) of the Act in respect of loss of actual earnings. The Court of Appeal held that the appellants were entitled to compensation for loss of possible earnings, including future earnings. The Collector cross-appealed against this decision.

There were three issues in the appeal before the Privy Council —

(1) Whether there has been an acquisition of the land for any purpose specified in section 5(1) of the Act within six months from its devastation by fire.

(2) What interpretation is to be placed upon the words in the first proviso to section 33(1) —

> "[The Board] shall consider the market value of the land immediately before it was devastated — having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters."

Together with the words in the third proviso —

> "That the market value of such land shall not exceed one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters."

(3) What interpretation is to be placed in the words in section 33(1)(d) "his actual earnings" and how they are to be applied in the present case.

Held: (1) the acquisition of the land started once the declaration under section 5 of the Act is made. Once the machinery for acquisition has started to operate under section 5, then subject to the power to withdraw, the owner of the land, who has no right to object to the acquisition, has an interest only in compensation;

(2) in this case the appellants could have conveyed the land with vacant possession and therefore the first proviso and the third proviso to section 33(1) of the Land Acquisition Act (before amendment in 1973) are not applicable and the appellants are entitled to compensation accordingly;

(3) the appellants are not under section 33(1)(d) of the Land Acquisition Act entitled to compensation in respect of future or provable earnings.

Cases referred to:-

(1) *Attorney-General* v. *Horner* (1884) 14 Q.B.D. 245.

(2) *David* v. *De Silva* [1934] A.C. 106.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Peter Boydel Q.C. and *Richard Phillips* for the appellants.

William Glover Q.C. and *M. Karthigesu* for the respondent.

Cur. Adv. Vult.

Lord Wilberforce (delivering the judgment of the Board): This appeal is from a judgment dated September 29, 1977 of the Court of Appeal in Singapore in which answers were given to questions raised by Case Stated under the Land Acquisition Act (Cap. 272). The Case was stated by the Appeals Board constituted under section 19 of the Act.

The questions relate to the compulsory acquisition of land situate at Raffles Place, Singapore. On the Government Resurvey Map this land is marked as Lot 124 of Town Subdivision I: it has an area of 24,123 sq. ft. It had on it a building occupied by the second appellant — Robinson and Company (Singapore) Pte. Ltd. which will be referred to as the "Trading Company". This building was destroyed by fire on November 21, 1972. At this date the land was held under a 999 year lease, commencing April 24, 1826, by the Agent of the Commission for the Administration of the Estate of the Portuguese Missions in China at Singapore ("the Portuguese Missions"). The Portuguese Missions granted a lease dated April 28, 1969 to the first appellant, Robinson and Company Ltd., for 27 years commencing July 1, 1963. Robinson and Company Ltd. in turn granted an underlease dated November 4, 1969 to the Trading Company for the unexpired portion of their sub-lease, less one day.

The following other dates are material:

1. On January 16, 1973 the President of the Republic of Singapore made a declaration under section 5 of the Act that the subject land was needed for public purposes.
2. On January 17, 1973 the declaration was published in the *Government Gazette.*
3. On February 7, 1973 the Collector of Land Revenue Singapore ("the Collector") issued and served a notice under section 8 of the Act.
4. On March 7, 1973 the Collector held an inquiry under section 10 of the Act.
5. On May 21, 1973 the period of six months from the total destruction of the building expired.

   Various other steps then followed in the acquisition proceedings: claims were submitted and an award and a corrected award were made by the Collector. Then
6. on September 5, 1974 the Collector took possession of the subject land under section 16 of the Act.

The relevance of the period of six months referred to under (5) above arises from the terms of the first proviso to section 33(1) of the Act. The subsection, as it was at the relevant time, was as follows:

"33.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely:—

(a) the market value at the date of the publication of the notification under subsection (1) of section 3 of this Act, if the notification is within six months from the date thereof followed by a declaration under section 5 of this Act in respect of the same land or part thereof, or in order cases the market value at the date of the publication of the declaration made under section 5 of this Act;

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings; and

(e) if, in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change:

Provided that in the case of an acquisition for any purpose specified in subsection (1) of section 5 of this Act of any land devastated or affected directly or indirectly by fire, explosion, thunderbolt, earthquake, storm, tempest, flood or any act of God, or of any land immediately adjoining such devastated or affected land as is required for any such purpose, the Board shall not, in the case of any such acquisition within a period of six months of the land being devastated or affected as aforesaid, take into consideration the matters set out in paragraphs (a) and (e) of this subsection but shall instead consider the market value of the land immediately before it was devastated or affected as aforesaid having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters, but without taking into account the value of any buildings or structures, permanent or otherwise, on the land at the material time:

And provided that such acquisition shall not affect the rights or liabilities of any owner, lessee, tenant or occupier of such buildings or structures in respect of any contract of insurance entered into by such owner, lessee, tenant or occupier:

And provided further that the market value of such land shall not exceed one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters unless the Minister in his discretion, by notification in the *Gazette*, specifies otherwise."

It has been the contention of the Collector that the land having been devastated by fire and acquired under the Act within six months thereafter, the provisos in the subsection apply with the result that the appellants are only entitled to one third of the vacant land market value, calculated under the provisos as apportioned to them by the Collector in respect of their interests. The Court of Appeal has so held.

It was further the contention of the Collector that, whether he was right or wrong on that first point, there should be no award under paragraph (d) in respect of loss of actual earnings. The Court of Appeal held that the appellants would be entitled to compensation for loss of provable earnings, including future earnings, based on actualities. The appellants appeal against the first decision: the Collector cross-appeals against the second.

There are therefore three issues:

1. Whether there has been an acquisition of the subject land for any purpose specified in section 5(1) of the Act within six months from its devastation by fire.
2. What interpretation is to be placed upon the words in the first proviso to section 33(1)

> [The Board] "shall... consider the market value of the land immediately before it was devastated... having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters"

together with the words in the third proviso

> "that the market value of such land shall not exceed one-third of the value of such land had it been vacant land not subject to any such encumbrances, tenancies or occupation by squatters."

3. What interpretation is to be placed on the words in section 33(1)(d) "his actual earnings" and how they are to be applied to the present case.

Their Lordships consider these points in this order.

1. It is the contention of the appellants that no acquisition took place within the six months period laid down by the first proviso to section 33, i.e. before May 21, 1973. Positively, they submit that acquisition under the Act occurs when the Collector takes possession, normally under section 16. This date is particularly significant because once possession has been taken, the Government loses its right to withdraw from the acquisition (section 48(1)). After possession has been taken, there remain only administrative acts to be taken in order to complete the Government's title. Moreover until the Collector takes possession, the landowner (in this case the appellants) remains liable for property tax and for the care and maintenance of the site. The appellants rely upon what they claim to be the natural meaning of the word "acquisition", namely a transfer of title, or change of ownership: this cannot be said to have occurred before the taking of possession. All that occurred before that event was merely preliminary steps leading up to acquisition. If they are right in this argument, there is no question of applying the provisos to section 33 since possession was taken well beyond six months from the devastation.

The respondent's argument is based, essentially, upon the scheme and design of the Act. There is first the declaration under section 5: where particular land "is needed, etc. etc." the President publicly declares the land to be required, etc. This is followed by a directive to the Collector to "take proceedings for the acquisition of the land" (section 6) and the Collector is thereupon obliged to cause the land to be marked out and measured, if this has not already been done (section 7). Then the Collector must cause notices to be posted stating that the Government intends to acquire the land (section 8). Thereafter a number of stages follow automatically, leading, eventually, to the transfer of the title. These include inquiry by the Collector into the amount of compensation to be allowed for the land and its apportionment among persons interested, and an award must be made under those heads as soon as possible after the conclusion of the inquiry (section 10(1)). Acquisition, in the respondent's contention, is a process, which is set in motion at the stage of section 5, or preferably, section 8: for the purpose of this appeal it does not matter which, since each event was within six months of the devastation.

In their Lordships' opinion, the first proviso to section 33 supports the respondent's contention. The proviso is designed to encourage the Government to let the landowner, whose land had been devastated, know as soon as possible whether it is acquiring his land. It achieves its purpose by providing that if the land is acquired within six months of the devastation the compensation which the Government has to pay will be less than if the acquisition is delayed until after the six months' period. This is an effective provision if acquisition occurs either when the declaration is made under section 5 or when notice of intention to acquire the land is posted under section 8. But it would lead to considerable practical difficulties if acquisition did not occur until the taking of possession under section 16. First, it would be a provision which would rarely be available to the Government, six months being a very short period for all that has to be done by the Collector before taking possession — notably an inquiry, an assessment and award of compensation, and with a possibility in the interim of reference to the High Court of questions for determination (section 10(2)). Secondly, if taking possession is the critical event, a situation might well arise in which, when the Collector has to make his award, he does not yet know whether compensation is to be assessed under the normal provisions of section 33(1)(a) to (e) or whether it is to be calculated under the provisos. The only course he could then take would be either to make an alternative award — which is not provided for in the Act — or to adjourn the inquiry, which he has power to do under section 13. But it seems unlikely that this power was intended to be exercised in circumstances in which its exercise, or non-exercise, might vitally affect the amount of compensation.

The Court of Appeal decided this issue in favour of the respondent and, on the whole, their Lordships agree. Once the machinery for acquisition has started to operate, which it has under section 5, then, subject to the power to withdraw, the owner of the land, who, it is important to observe, has no right to object to the acquisition, has an interest only in compensation. To accept this earlier stage as that from which acquisition is to start, accords with the policy of section 33, and presents the lesser difficulties in practical operation. Their Lordships are, on this point, in favour of the respondent, being of opinion that the operation of section 5 is the critical date.

2. The difficulty in this point, which is considerable, lies in understanding the concluding passage of the first proviso in section 33(1). There appears to be no doubt as to the "mischief" which this proviso was designed to meet, a mischief exemplified by the consequences of a previous devastation by fire at Bukit Ho Swee. This was that landowners, whose land was occupied by squatters or tenants, might be fortuitously enriched by the removal of these persons in consequence of the devastation, if they were able to claim compensation on a vacant possession value. To accept this would not only be unfair to the public as taxpayers but would be an incentive to arson. The provisos clearly have the object of preventing fortuitous enrichment of this kind by requiring the land to be valued as if the squatters or tenants were still there. So much — but only so much — seems clear.

The first words which require interpretation are "having regard to the fact that . . .". Do these mean "having regard to the fact, *if* it be the fact that", or "having regard to the fact, whether it be the fact or not"? In other words do they presuppose an existing or an imaginary state of facts? Their Lordships have no doubt that the former is correct. A hypothesis, which does not disclose what exactly is to be hypothesised, cannot be the basis of the legislative formula. The Court of Appeal took the same view and their Lordships endorse it.

From this it follows that the decisive question is whether it was the fact that at the material time (viz. before devastation) the land could not have been conveyed with vacant possession as (sc. since) it was subject to encumbrances, tenancies, or occupation by squatters. This formula is undeniably obscure. In the first place it is not clear what in this context is meant by "encumbrances" or "tenancies". There is a case for saying that "tenancies" means tenancies by the month or at will — see the definition of "person interested" in section 2, and that lessees are distinguished from tenants — see section 9 and section 33(1) second proviso. There is also a case for saying that "encumbrances" does not, in this Act, include leases, or subleases — see section 9. But the formula may and should be interpreted on broader lines. It is clear that the persons interested here were the Portuguese Missions and the two Robinson companies. They could undoubtedly convey the land with vacant possession. If the Portuguese Missions had been the only persons interested there could be no question of applying the proviso: there seems no logical reason for applying it just because certain other interests have been carved out of their larger interest, which other interests are wholly unaffected by the devastation, and which themselves are interests capable of being compensated. The logical and proper course would seem to be to value the land itself at a vacant possession value (which is what the Government is acquiring, and would have acquired before the devastation) and then apportion that value — a perfectly possible process as the Collector's award has shown. An alternative approach would be to say that whatever might be the position as regards the Portuguese Missions if its interest alone was being acquired, the land (the site) could undoubtedly have been conveyed by the Trading Company with vacant possession, and its interest, which is an interest in the title appearing in the Registry of Deeds, is not encumbered in any way: so what justification can there be for reducing its compensation?

If this is right, the third proviso presents no difficulty. "Such land" must clearly mean such land as cannot be conveyed with vacant possession as it was subject to encumbrances, etc.: this is in any event made clear by the rest of the third proviso which points the contrast between "such land" and "vacant land not subject to any such encumbrances, tenancies, or occupation by squatters". For the same reasons the third proviso does not apply.

Their Lordships would add, in view of the difficulty of reaching a certain conclusion on the legis-

lative formula, that they consider that such obscurity as there is ought to be resolved in favour of the person whose property is taken away, all the more so since the effect of the third proviso may, in such cases as the present, be of a confiscatory nature. The principle to be applied is similar to those invoked in *A.G.* v. *Horner*[1] and *David* v. *De Silva.*[2]

On this point therefore their Lordships reach a conclusion different from that of the Court of Appeal and in favour of the appellants.

3. This is a short point which, in their Lordships' opinion, depends upon the meaning to be given to "actual". The appellants' contention is that this means "provable" as opposed to "speculative": but this is not, their Lordships consider, the natural meaning of the word. In ordinary language a man cannot be said to be injuriously affected as to his actual earnings unless at the time of the act causing the injurious affection (viz. the acquisition) he had some earnings capable of being injuriously affected. The statute, section 33(1)(d), requires that the loss of earnings must be shown to have arisen by reason of the acquisition. In other words a business must have been in being on the land at the time of acquisition. It is moreover arguable that on the language of the paragraph the damage must be sustained "at the time of the Collector's taking possession".

But at the time of the acquisition the land was devastated and no business was being carried on there. If the appellants have suffered in their business by reason of the acquisition, it can only be a future loss, The devastation affected the appellants' actual earnings: the acquisition merely prevents the appellants from resuming business on the land at some future date when the devastation has been made good. On this view the effect of the provision would be analogous to that which applies under English law to disturbance claims. On this point their Lordships respectfully differ from the Court of Appeal.

For these reasons their Lordships allow the appeal as regards the answer to be given to the second question of law stated by the Appeals Board. The answer should be that the first proviso and the third proviso to section 33(1) of the Land Acquisition Act (before amendment in 1973) are not applicable and that the appellants are entitled to compensation accordingly. They allow the cross-appeal as regards the answer to be given to the third question of law stated by the Board. The answer should be that the appellants are not, under section 33(1)(d) of the Land Acquisition Act, entitled to compensation in respect of future, or provable, earnings. The appellants are entitled to the costs of the appeal, and the respondent to the costs of his cross-appeal.

Order accordingly.

Solicitors: *Coward Chance; Turner Peacock.*

SINGAPORE REPORTS

TAN CHOON CHYE v. SINGAPORE SOCIETY OF ACCOUNTANTS

[C.A. (Chua, Choor Singh & Rajah JJ.) November 6, 1979]
[Singapore — Civil Appeal No. 46 of 1979]

Accountants — Professional misconduct — Appellant found guilty by disciplinary proceedings — Appeal to High Court dismissed — Meaning of "formal complaint" — Scope of s. 33(2) of Accountants Act (Cap. 212) — Accountants Act (Cap. 212), ss. 22(1), 32(a), 33(1), 33(2), 33(6)(a)(i) & 34(1)(b).

Administrative Law — Disciplinary proceedings — Rules of natural justice.

The appellant in this case was an accountant. He was charged for "grave impropriety or infamous conduct in a professional respect". The charge arose out of a letter of April 1, 1976 from the Director of Corrupt Practices Investigation Bureau to the Registrar. The appellant was alleged to have collected $50,000 from one Lou, an industrialist, and to have given the said money as a bribe to one Wan, a Project Officer of EDB, for considering his application for registration under the Control of Manufacture Act. The said Wan had obtained bribes through the appellant from one Fong. Wan had been charged and convicted.

The Disciplinary Committee found that the appellant had acted as an intermediary in his capacity as a practising accountant in connection with the said bribery offence in which the appellant had collected $50,000 from one Lou and gave the money as a bribe to Wan. The appellant appealed against the decision of the Disciplinary Committee. The learned Chief Justice dismissed the appeal (see [1979] 2 M.L.J. 61) and the appellant appealed.

Held, dismissing the appeal: (1) the word "formal" in the expression "formal complaint" in section 33(1) of the Accountants Act must be given its ordinary dictionary meaning of explicit and definite. The learned Chief Justice was quite correct in his view that the letter from the Director of the Corrupt Practices Investigation Bureau constituted a formal complaint within the meaning of section 33(1) of the Act;

(2) under section 33(2) of the Act the Registrar has a discretion whether to require a complaint to be supported by a statutory declaration;

(3) the charge in the present case contained particulars which clearly met the requirements of natural justice, i.e., that a person must be given adequate notice of the case against him to afford him a fair opportunity of answering it.

CIVIL APPEAL.

K.E. Hilborne for the appellant.

Alan Wong for the respondent.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Court): This appeal arises from the following charge preferred by the Disciplinary Committee of the Singapore Society of Accountants (the Society) against the appellant Tan Choon Chye, an accountant:

"The charge against you is that you acted as an intermediary in your capacity as a practising accountant in connection with a bribery offence, to wit, you collected $50,000 from one Lou Chi Chung, an Industrialist, and gave this money as a bribe to Wan Ming Sing, a Project Officer of The Economic Development Board as a favour for showing consideration for an application for registration under the Control of Manufacture Act, thereby committing grave impropriety or infamous conduct in a professional respect in the performance of your professional duties that is discreditable to an accountant so as to render the exercise of the power of the Disciplinary Committee expedient in the interests of the public or of the Society."